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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,772	09/15/2003	Ronald P. Doyle	RSW920030174US1	2183

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EXAMINER

WAI, ERIC CHARLES

ART UNIT	PAPER NUMBER
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2195

NOTIFICATION DATE	DELIVERY MODE
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09/02/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hwdpatents.com

Office Action Summary

Application No.

10/662,772

Applicant(s)

DOYLE ET AL.

Examiner

ERIC C. WAI

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-11,13,15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-11, 13, 15, and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1, 3-11, 13, 15, and 17 are presented for examination.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 17 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a signal directly or indirectly by claiming a medium and the Specification recites evidence where the medium is defined as a transmission medium ([0019]). In that event, the claims are directed to a form of energy which at present the office feels does not fall into a category of invention. The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101.
<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf>

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-11, 13, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrzejak et al. (US Pat No. 7,277,960).

6. Regarding claim 1, Andrzejak discloses a method of managing resources in a system, the method comprising:

determining a demand for a service in a plurality of services being provided using a plurality of software servers in the system in the system, wherein the plurality of services share the resources of the system (col 1 lines 31-34, wherein it is inherent that there is a demand for the service by the distributed application);

determining attributes of the system on the image server, the attributes comprising a demand for another service in the plurality of services and at least one attribute of a resource of the system, the resource comprising one of: a software server, the image server, a network, or a storage system (col 1 lines 39-45, wherein relationships among the services are considered); and

provisioning resources for the service based on the demands and at least one attribute of a resource using the image server (col 1 lines 36-37, wherein the placement of services on the nodes/resources is optimized).

7. Andrzejak does not teach the determining and provisioning occurs on the image server. However, it would have been obvious to utilize a server in the system of

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Andrzejak to perform such functions. One would be motivated by the desire to have a means to perform the steps taught by Andrzejak.

8. Regarding claim 3, Andrzejak does not teach that the resources comprise at least one software server, and wherein the at least one attribute comprises a software status of the at least one software server.

9. Andrezejak considers the services provided by various nodes in a network of computers. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a software server and its status. Therefore, one would be motivated by the desire to include software servers in the network of computers of Andrezejak.

10. Regarding claim 4, Andrzejak does not teach that the attribute comprises a cache state of the at least one software server.

11. It would have been obvious to one of ordinary skill in the art at the time of the invention to include provisioning resources based on a cache state. One would be motivated by the desire for more efficient use of resources by reducing the necessity to replenish the cache with new data.

12. Regarding claim 5, Andrzejak does not explicitly teach that the attribute comprises a time period required to provision at least one of the resources for the service.

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13. It would have been obvious to one of ordinary skill in the art at the time of the invention to factor in a time period required to provision a resource into the cost of doing so. One would be motivated by the desire to increase profits and efficiency.

14. Regarding claim 6, Andrzejak teaches that the attribute comprises a load on the image system (col 1 lines 39-45, processing capability of the node).

15. Regarding claims 7-10, Andrzejak teaches the method as claimed in claims 1, and 3-6.

16. Regarding claim 11, 13, and 15, they are the system claims of claims 1, and 3-6 above. Therefore, they are rejected for the same reasons as claims 1, and 3-6 above.

17. Regarding claim 17, it is the program product claim of claims 1 above. Therefore, it is rejected for the same reasons as claim 1 above.

Response to Arguments

18. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric C. Wai whose telephone number is 571-270-1012. The examiner can normally be reached on Mon-Thurs, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng - Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Meng-Ai An/
Supervisory Patent Examiner, Art Unit 2195

/Eric C Wai/
Examiner, Art Unit 2195